

*United States Court of Appeals
for the Second Circuit*



APPENDIX

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74-1815

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

GEORGE W. HENDRICKS

Appellant.

Docket No. 74-1815

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
606 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

E. THOMAS BOYLE

Of Counsel

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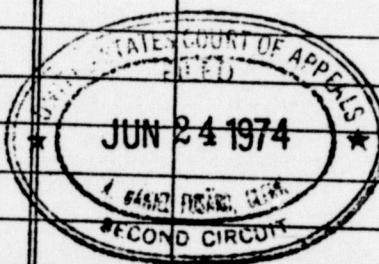
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JUDGE WARD

74 C.R.R. 49

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	<i>For U. S.:</i>
vs.	Jeffrey Glekel, AUSA
GEORGE W. HENDRICKS	264-6302

ABSTRACT OF COSTS (02)	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal,					
Attorney,					
COMMUNICATED 18					
WISCONSIN 1708					
Possess. of stolen mail.					
(Three Counts)					



DATE	PROCEEDINGS
4-16-74	Filed information and waiver of indictment. (Superseding 73Cr940) Deft. (atty. present) Pleads not guilty. Jury trial begun before Ward, J.
4-17-74	Trial continues. Juror #3 excused. Alternate Juror #1 is now Juror #3.
4-18-74	Trial continues.
4-19-74	Trial concluded. Verdict GUILTY as charged in all counts. P.S.I. ordered. Sentence date 6-4-74. Bail fixed @ \$5,000. PRB -Co-signed by Wife—WARD, J.
4-22-74	Bail limits extended to Eastern District of New York and District of New Jersey—W.

(2) This info. supersedes 73 Cr. 940

Waiver of Indictment

Cr. Form No. 18

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

GEORGE W. HENDRICKS,

Defendant.

} No.



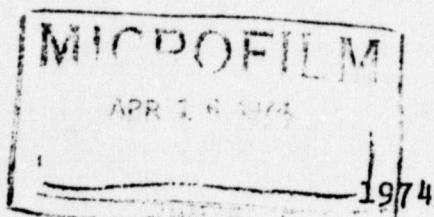
GEORGE W. HENDRICKS,

the above named defendant, who is accused of

a violation of Title 18, United States Code, Sections 1708 and 2,

being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

Date



George W. H. Hendricks
Defendant.
Vickie Brugger
Witness.
Michelle Hart
Counsel for Defendant.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

- v -

74 CRIM 422

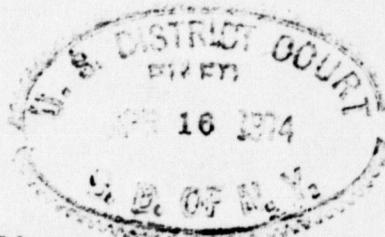
: INFORMATION

GEORGE W. HENDRICKS,

: S74 Cr. (RJW)

Defendant. :

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COUNT ONE



The United States Attorney charges:

On or about the 1st day of December, 1973, in the Southern District of New York, GEORGE W. HENDRICKS, the defendant, unlawfully, wilfully and knowingly did buy, receive and have in his possession the contents of one or more letters, to wit, one or more City of New York Department of Social Services checks, in amounts and addressed as hereinafter set forth, which had been stolen, taken, embezzled and abstracted from and out of mail, letter boxes, mail receptacles and other authorized depositories for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted:

<u>Addressee</u>	<u>Amount</u>
1. Arroya Juanita 1458 Webster Ave. 10D Bronx, New York 10456	\$158.50
2. Arzola Elsie 1119 Wash. Ave. 2 Bronx, New York	\$136.50
3. Bethea Louise 1109 Teller Ave INR Bronx, New York 10456	\$ 94.75
4. Bovain Helen 1350 Webster Ave 12G Bronx, New York 10456	\$210.50

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<u>Addressee</u>	<u>Amount</u>
5. Burgos Nereida 1110 Teller Ave. 6K Bronx, New York 10456	\$160.00
6. Campbell Thomasina 320 E. 166 St. 17 Bronx, New York 10456	\$128.60
7. Chavers Louise 1136 Teller Ave 1A Bronx, New York 10456	\$ 82.25
8. Crippen Viola 1368 Webster Ave. 2H Bronx, New York 10456	\$176.50
9. Daniels Mary 1222 Brook Ave. Bronx, New York 10456	\$ 84.60
10. Darden Bertha 1428 Webster Ave. 10B Bronx, New York 10456	\$182.50
11. Davis Nellie 1128 Findlay Ave 5N Bronx, New York 10456	\$108.85
12. DeJesus A for Richard 1133 Teller Ave Bronx, New York	\$ 80.50
13. Graham Moses 1 Gouverneur Pl 18 Bronx, New York	\$ 91.30
14. Guerrero Carmen 1368 Webster Ave 2C Bronx, New York 10456	\$182.50

(Title 18, United States Code, Sections 1708 and 2.)

COUNT TWO

The United States Attorney further charges:

On or about the 1st day of December, 1972, in the Southern District of New York, GEORGE W. HENDRICKS, the defendant, unlawfully, wilfully and knowingly did buy, receive and have in his possession the contents of one or more letters, to wit, one or more City of New York Department of Social Services checks, in amounts and addressed as hereinafter set forth, which had been stolen, taken, embezzled and abstracted from and out of mail, letter boxes, mail receptacles and other authorized depositories for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted:

<u>Addressee</u>	<u>Amount</u>
1. Lee Mabel 1352 Webster Ave. Bronx, New York 10456	\$ 88.50
2. Lloyd Denise 1408 Webster Ave. 20L Bronx, New York 10456	\$ 93.00
3. Marshall Josephine 1113 Findlay Ave. Bronx, New York 10456	\$ 93.00
4. Mason Richard 305 E. 166 St. 4E Bronx, New York 10456	\$148.00
5. Mayhew Virginia 1105 Findlay Ave. 10 Bronx, New York 10456	\$203.00
6. Dabon Marlin 3414 Park Ave. 2R Bronx, New York 10456	\$139.20
7. Parks Edna 422 E. 169 St. 18E Bronx, New York 10456	\$184.00
8. Perez Noemi 445 E. 166 St. 6D Bronx, New York 10456	\$103.60
9. Robinson Marie 3434 Park Ave. 3A Bronx, New York 10456	\$ 98.50
10. Rodriguez Cirila 423 E. 168 St. 10F Bronx, New York 10456	\$ 88.50
11. Rodriguez Juanita 1117 Findlay Ave. 3N Bronx, New York 10456	\$ 85.95

<u>Addressee</u>	<u>Amount</u>
12. Santiago Carmen 1312 Sheridan Ave. Bronx, New York 10456	\$109.40
13. Soto Isabel 1134 Findlay Ave. 1C Bronx, New York 10456	\$309.50
14. Tinsley Evelyn 1109 Teller Ave. 3N Bronx, New York 10456	\$ 95.85
15. Thompson Jacqueline 1368 Webster Ave. 11A Bronx, New York 10456	\$ 86.50
16. Wright Ethel 2 Gouverneur Pl. 3 Bronx, New York	\$126.70

(Title 18, United States Code, Sections 1708 and 2.)

COUNT THREE

The United States Attorney further charges:

On or about the 5th day of December, 197~~8~~, in the Southern District of New York, GEORGE W. HENDRICKS, the defendant, unlawfully, wilfully and knowingly did buy, receive and have in his possession the contents of one or more letters, to wit, one or more City of New York Department of Social Services checks, in amounts and addressed as hereinafter set forth, which had been stolen, taken, embezzled and abstracted from and out of mail, letter boxes, mail receptacles and other authorized depositoryes for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted:

<u>Addressee</u>	<u>Amount</u>
1. Anderson, Jean 1006 Grant Ave. Bronx, New York 10456	\$ 73.85
2. Alvarado Cecilio 1203 Findlay Ave. Bronx, New York 10456	\$122.65
3. Barnes, Juanita 1041 Findlay Ave. 5D Bronx, New York 10456	\$148.00
4. Brown, Vinnie 1103 Sheridan Ave. Bronx, New York 10456	\$ 84.65
5. Boyd, Jeanette 1045 College Ave. 3C Bronx, New York 10456	\$ 91.35

<u>Addressee</u>	<u>Amount</u>
6. Booze, Catherine 1408 Webster Ave. 12C Bronx, New York 10456	\$182.50
7. Crawford, Maria 4 Governor Pl. 5 Bronx, New York 10456	\$143.00
8. Felician C. Mariana 335 E. 166 St. 1 Bronx, New York 10456	\$139.60
9. Harden Hazel 1428 Webster Ave. Bronx, New York 10456	\$162.25
10. Helmstetter Roland 309 E. 164 St. M5 Bronx, New York 10456	\$ 70.50
11. Hill Dennis 585 E. 140 St. 4D Bronx, New York 10456	\$157.05
12. Houston Betty 1114 Findlay Ave. 3N Bronx, New York 10454	\$145.15
13. Jimenez Francisco 1020 College Ave. 4G Bronx, New York 10456	\$ 34.35
14. Jimenez Catalina 1020 College Ave. 4G Bronx, New York 10456	\$ 34.35
15. Landy Forrest 1109 Findlay Ave. Bronx, New York 10456	\$124.55
16. Lopez Tomasa 1020 College Ave. 6A Bronx, New York 10456	\$ 95.00
17. Manners Clara 944 College Ave. 1 Fl. Bronx, New York 10456	\$121.40
18. Peterson Lucille 1428 Webster Ave. 3D Bronx, New York 10456	\$190.50
19. Perez W or Mirthia 1105 Findlay Ave. 4 Bronx, New York 10456	\$118.75
20. Rivera Avelina 1068 Findlay Ave. 7 Bronx, New York 10456	\$122.80

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<u>Addressee</u>	<u>Amount</u>
21. Nelson Valerie 1458 Webster Ave. Bronx, New York 10456	\$116.50
22. Pagan Milka 1350 Webster Ave. Bronx, New York 10456	\$129.00
23. Rodriguez Victor 1052 Findlay Ave. Bronx, New York 10456	\$ 48.40
24. Rodriguez Carmen 1408 Webster Ave. Bronx, New York 10456	\$149.00
25. Vargas Felicita 335 E. 166 St. Bronx, New York 10456	\$131.90
26. Wilson Rosemary 280 E. 166 St. 25 Bronx, New York 10456	\$168.50

(Title 18, United States Code, Sections 1708 and 2.)

Paul J. Curran
PAUL J. CURRAN
United States Attorney

~~11. D.G.C. WARD~~

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- 4 -

GEORGE W. HENDRICKS,

Defendant.

APR 17 1974 Trial continued. Jury of 3 re-pleaded.
Jury #1 vs. witness #3.
APR 18 1974 Trial continues.
APR 19 1974 " Concluded. Verdict given.

~~Initial Container Number #321
Final Container Number #331~~

APR 17 1974 Trial continued. Jury of 3 re-pleaded.
Jury #1 vs. witness #3.
APR 18 1974 Trial continues.
APR 19 1974 " Concluded. Verdict given.

INFORMATION

PAUL J. CURRAN

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The service of

by admitted.

New York, - 19.

Attorney for

107

Attorney for

JUN 4 - 1974

Lst. with attorney present and
to imprisonment for term of yrs.

4-2225. On Oct. 2, 1933, at

2.8.2 on CT 3 and CT 4, is placed

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sentence cont'd.

Counts 1 + 2 + subject to the standing probation order of the Court.

Bail fixed at \$5,000. P.R.B. co-signed by wife continued pending appeal, which is to be filed immediately.

Bail limits extended to E.D. of N.Y. and the District of New Jersey.

73 Cr. 940 to be dismissed.

S Ward J

2 CHARGE TO THE JURY

3 Hon. Robert J. Ward

4 Mr. Foreman, ladies and gentlemen:

5 We come now to that stage of the case where you and
6 I do our part in the administration of justice. Your role is
7 to pass upon and decide the factual issues. You are the sole
8 and exclusive judges of the facts. You pass upon the weight
9 of the evidence. You determine the credibility of the
10 witnesses. You resolve such conflicts as there may be in the
11 evidence and you draw such reasonable inferences as may be
12 warranted by the testimony or exhibits in the case.

13 My function is to instruct you as to the law
14 applicable to the case. It is your duty to accept the law as
15 I state it to you in these instructions and to apply it to the
16 facts as you find them.

17 With respect to any fact matter, it is your recol-
18 lection and yours alone that governs. Anything that counsel,
19 either for the Government or for the defendant, may have said
20 with respect to the facts, with respect to matters in evidence
21 or as to any factual matter, whether stated in a question, in
22 argument or in summation, is not to be substituted for your
23 own independent recollection. So, too, anything I may have
24 said during the trial, or may refer to during the course of
25 these instructions as to any matter in evidence, or as to any

2 factual matter, is not to be taken in lieu of your own
3 recollection.

4 As I said a moment or two ago, should you require
5 assistance with regard to testimony, you may request that any
6 portion of the testimony, or any portion of the charge may be
7 read back to you. You will then be brought into the courtroom
8 and the portion of the testimony, or the portion of the charge
9 which you request will be read to you. As I also indicated,
10 should you wish to see any material which is in evidence, you
11 may call for that material and it will be sent into the jury
12 room for you to see.

13 George W. Hendricks has pleaded not guilty to the
14 charges contained in the information filed against him. There-
15 fore, the Government has the burden of proving the charges
16 against him beyond a reasonable doubt. It is a burden that
17 never shifts and remains upon the Government throughout the
18 entire trial.

19 Under our system of law, a defendant does not have
20 to prove his innocence. On the contrary, he is presumed to be
21 innocent of the charges contained in the information. The
22 presumption of innocence was in his favor at the start of the
23 trial and continues in his favor throughout the trial. It is
24 removed if and when you are satisfied that the Government has
25 sustained its burden of proving the defendant's guilt beyond

2 a reasonable doubt.

3 As I told you when you were being selected, an
4 information is not evidence. It is a technique, or method, or
5 procedure by which persons accused by a United States Attorney
6 of crimes are brought into court and then their guilt or
7 innocence is determined by a trial jury, such as you are. An
8 information has no evidentiary value. It does not constitute
9 proof or evidence. It is merely an accusation.

10 The information in this case contains three counts,
11 three separate charges. I shall now read the information
12 to you:

13 "Count 1. The United States Attorney charges:

14 "On or about the 1st day of December, 1972, in the
15 Southern District of New York, George W. Hendricks, the defen-
16 dant, unlawfully, willfully and knowingly did buy, receive and
17 have in his possession the contents of one or more letters,
18 to wit, one or more City of New York Department of Social
19 Services checks, in amounts and addressed as hereinafter set
20 forth, which had been stolen, taken, embezzled and abstracted
21 from and out of mail, letter boxes, mail receptacles and other
22 authorized depositories for mail matter, knowing the same to
23 have been stolen, taken, embezzled and abstracted:"

24 There follows a listing under the word "Addressee"
25 and to the right of the word "Addressee," "Amount."

2 I will read first under "Addressee" and under
3 "Amount." In essence, the amount is the amount of the particu-
4 lar check.

5 "Arroya, Juanita, 1458 Webster Avenue, 16-D, Bronx,
6 New York, 10456. Amount, \$158.50.

7 "Arzola, Elsie, 1119 Wash. Ave. 2, Bronx, New York.
8 Amount, \$136.50.

9 "Campbell, Thomasena, 320 East 166th Street, 17,
10 Bronx, New York , 10456. Amount, \$128.60.

11 "Guerrero, Carmen, 1368 Webster Avenue, 2-C, Bronx,
12 New York, 10456. Amount, \$182.50.

13 "(Title 18, United States Code, Section 1708 and 2.)"
14 I will refer back to those sections of the United
15 States Code later in my charge.

16 "Count 2:

17 "The United States Attorney further charges:

18 "On or about the 1st day of December, 1972, in the
19 Southern District of New York, George W. Hendricks, the defen-
20 dant, unlawfully, willfully and knowingly did buy, receive and
21 have in his possession the contents of one or more letters,
22 to wit, one or more City of New York Department of Social
23 Services checks, in amounts and addressed as hereinafter set
24 forth, which had been stolen, taken, embezzled and abstracted
25 from and out of mail, letter boxes, mail receptacles and other

2 authorized depositories for mail matter, knowing the same to
3 have been stolen, taken, embezzled and abstracted."

4 There follow addressees and amounts.

5 "Lloyd, Denise, 1468 Webster Avenue, 20-L, Bronx,
6 New York, 10456. Amount, \$93.

7 "Perez, Noemi, 445 East 166th Street, 6-D, Bronx,
8 New York, 10456. Amount, \$103.60.

9 "Rodriguez, Juanita, 111 Findlay Avenue, 3-N, Bronx,
10 New York, 10456. Amount, \$85.95.

11 "Santiago, Carmen, 1312 Sheridan Avenue, Bronx, New
12 York, 10456. Amount, \$109.40.

13 "(Title 18, United States Code, Sections 1408 and 2.)"

14 "Count 3:

15 "The United States Attorney charges:

16 "On or about the 5th day of December, 1972, in the
17 Southern District of New York, George W. Hendricks, the defen-
18 dant, unlawfully, willfully and knowingly did buy, receive and
19 have in his possession the contents of one or more letters, to
20 wit, one or more City of New York Department of Social
21 Services checks, in amounts and addressed as hereinafter set
22 forth, which had been stolen, taken, embezzled and abstracted
23 from and out of mail, letter boxes, mail receptacles and other
24 authorized depositories for mail matter, knowing the same to
25 have been stolen, taken, embezzled and abstracted:

2 "Anderson, Jean, 106 Grant Avenue, Bronx, New York,
3 10456. Amount, \$73.85.

4 "Alvarado, Cecilio, 1203 Findlay Avenue, Bronx, New
5 York, 10456. Amount, \$122.65.

6 "Barnes, Juanita, 1041 Findlay Avenue, 5-D, Bronx,
7 New York, 10456. Amount, \$148.

8 "Brown, Vinnie, 1103 Sheridan Avenue, Bronx, New
9 York, 10456. Amount, \$84.65.

10 "Booze, Catherine, 1408 Webster Avenue, 12-C, Bronx,
11 New York, 10456. Amount, \$182.50.

12 "Harden, Hazel, 1428 Webster Avenue, Bronx, New
13 York, 10456. Amount, \$162.25.

14 "(Title 18, United States Code, Sections 1708 and 2.)"

15 The statute which establishes the offenses which the
16 defendant is accused of having committed in the information is,
17 as I have read, Section 1708, Title 18, United States Code, and
18 also Section 2 of Title 18 of the United States Code, which I
19 will refer to later.

20 Section 1708 reads in pertinent part as follows:

21 "Whoever buys, receives or conceals, or unlawfully
22 has in his possession any letter, postal card, package, bag
23 of mail, or any article or thing contained therein which has
24 been stolen, taken, embezzled or abstracted from the mail,
25 knowing the same to have been stolen, taken, embezzled or

2 abstracted, shall be guilty of a crime."

3 In order to convict a defendant of the crime of
4 possession of the contents of stolen mail, you must find beyond
5 a reasonable doubt, one, that the letters containing the checks
6 were deposited in the mails.

7 I believe I recall a stipulation entered into by
8 counsel which satisfies that particular element, and this is
9 a matter which you shall accept as having been stipulated, in
10 essence, that the checks which are the subject matter of this
11 information were initially deposited in the mails by the
12 Department of Social Services.

13 Two, that the letters containing the checks were
14 stolen from the mails; three, that on or about the dates
15 specified in the indictment, the defendant had in his posses-
16 sion the contents of the letters, that is, the checks; four,
17 that at the time of his possession, the defendant knew the
18 checks in his possession were stolen. It is not necessary
19 that the defendant knew that the checks were stolen from the
20 mails, it is only necessary that the defendant knew that the
21 checks were stolen.

22 The defendant has been indicted for the crime of
23 possessing stolen mail. To convict him of the crime charged
24 in the indictment, the Government must prove beyond a reason-
25 able doubt that the defendant bought, received, concealed or

2 unlawfully had in his possession any mail, or any article
3 contained therein, which was stolen or embezzled from the mail,
4 or from an authorized mail depository with knowledge that such
5 mail was unlawfully taken.

6 We are not concerned in this indictment with who
7 stole the mail, nor are we concerned with who stole the checks.
8 Our only concern is whether the defendant possessed the checks
9 with knowledge that they were stolen.

10 In order to convict the defendant, you must find
11 beyond a reasonable doubt that the defendant received or
12 possessed the contents of stolen mail. You may make such a
13 finding if you conclude that the defendant possessed stolen
14 mail, to wit, the welfare checks.

15 In order to convict the defendant, you must also
16 find beyond a reasonable doubt that the defendant's alleged
17 possession of the stolen checks was committed unlawfully, will-
18 fully and knowingly.

19 What do these terms, unlawfully, willfully, and
20 knowingly mean? An act is done knowingly if it is done volun-
21 tarily and intentionally and not because of mistake, ignorance
22 or accident. The purpose of adding the word "knowingly" is to
23 insure that no one is convicted for an act done because of
24 mistake, ignorance or accident or other innocent reason. Un-
25 lawfully means done contrary to law, so to do an act

2 unlawfully means to do willfully something which is contrary
3 to law. An act is done willfully if it is done knowingly,
4 intentionally and deliberately.

5 In determining whether a defendant has acted
6 knowingly and willfully, it is not necessary for the Government
7 to establish that the defendant knew he was breaking any
8 particular law or particular rule.

9 These questions of knowledge and wilfulness, like
10 all other questions of fact, are solely for you to determine.
11 Medical science as yet has devised no instrument by which you
12 can go back and determine what purpose was in a person's mind
13 when that person performed certain acts.

14 Rarely is direct proof available that one had
15 knowledge of a fact or intended to bring about a result. Now
16 and then a person may commit himself in writing or make a
17 statement in which he concedes that as of a certain time he had
18 knowledge of a fact and that he acted with a specific intent to
19 achieve a specific result. But that is rare and is the exception
20 rather than the rule.

21 The intent with which an act is done is often more
22 clearly and conclusively shown by the act itself or by a
23 series of acts than by words or explanations of the act long
24 after its occurrence. Frequently the acts of individuals
25 speak their intentions more clearly than do their words. In

2 this regard one might apply the old adage, actions speak
3 louder than words. Accordingly, intent, willfulness and
4 knowledge are usually surrounded by facts and circumstances
5 as of the time acts occurred or events took place, and the
6 reasonable inferences to be drawn therefrom. This is referred
7 to as circumstantial evidence, and if believed it is as
8 acceptable as direct evidence. You should apply your common
9 sense and use such reasonable inferences as may be warranted
10 by facts proved to your satisfaction.

11 In determining these issues you may consider any
12 statements made and acts done or omitted to be done by the
13 defendant, together with all other facts and circumstances in
14 evidence which reasonably relate to a determination of state
15 of mind.

16 Guilty knowledge cannot be established by demonstra-
17 ting merely negligence or even foolishness on the part of a
18 defendant. However, it is not necessary that the Government
19 prove to a certainty that the defendant knew the checks were
20 stolen. The element of knowledge may be satisfied by proof
21 that the defendant acted with reckless disregard of whether
22 the checks were stolen and with a conscious purpose to avoid
23 learning the truth.

24 The element of knowledge may be satisfied by proof
25 that a defendant deliberately closed his eyes to what otherwise

2 would have been obvious to him.

3 Possession of property which had been recently
4 stolen, if not satisfactorily explained, is a circumstance
5 from which you may reasonably draw the inference and find in
6 the light of surrounding circumstances that the person in
7 possession knew the property had been stolen.

8 The term "recently" is a relative term which has no
9 fixed meaning. Whether property may be considered as recently
10 stolen depends upon the nature of the property and all the
11 facts and circumstances shown by the evidence. The longer
12 the period of time since the theft, the weaker the inference
13 which may be drawn from unexplained possession.

14 If you find from the evidence beyond a reasonable
15 doubt that the letters containing the welfare checks were
16 stolen and that while recently stolen the checks were in the
17 possession of the defendant, you would ordinarily be justified
18 in drawing from those facts the inference that the contents
19 were possessed by the accused with knowledge that they were
20 stolen property, unless possession of the recently stolen
21 property by the defendant is explained to your satisfaction
22 by other facts and circumstances in evidence.

23 In considering whether possession of recently
24 stolen property has been satisfactorily explained, you will
25 bear in mind that the defendant need not take the witness

2 stand and testify. As I have said before, the burden of proof
3 is on the Government.

4 Possession may be satisfactorily explained through
5 other circumstances, other evidence and independent of any
6 testimony of the defendant. It must be noted, however, that
7 you are never required to make this inference. It is the
8 exclusive province of the jury to determine whether the facts
9 and circumstances shown by the evidence in this case warrant
10 any inference which the law permits the jury to draw from the
11 possession of recently stolen property.

12 You may consider, in determining whether the defen-
13 dant acted with guilty knowledge, the fact, if you find it
14 true, that the defendant engaged in other transactions similar
15 to those charged in the indictment.

16 There has been some testimony that the defendant made
17 statements to the postal inspectors and to one assistant
18 United States attorney tending to show his innocence. There
19 has also been testimony that at least some of these statements
20 were false. In addition to the statements to which I refer,
21 to the postal inspectors and the assistant United States
22 attorney, there is also testimony of a conversation with Mr.
23 Donahue, the manager of the Bankers Trust Company branch.

24 I charge you that an exculpatory statement, when
25 shown to be false, is circumstantial evidence of guilty

2 consciousness and has independent probative force.

3 When I read the information I mentioned another
4 section of the United States Code. Title 18 of the United
5 States Code, Section 2, which is also charged in the indict-
6 ment, provides that a person who aids and abets another to
7 commit an offense is just as guilty of that offense as if
8 he committed it himself. Accordingly, you may find George
9 W. Hendricks guilty of the offense charged in Counts 1, 2 and
10 3 if you find beyond a reasonable doubt that the Messrs.
11 Cohen and Rosen, or Mr. Cohen or Mr. Rosen, committed the
12 offense and that George W. Hendricks aided and abetted them.

13 To determine whether a defendant aided and abetted
14 in the commission of an offense, you will ask yourself these
15 questions:

16 Did he associate himself with the venture?

17 Did he participate in it as something he wished to
18 bring about?

19 Did he seek by his acts to make it succeed?

20 If he did, then he is an aider and abetter.

21 Now, how do you determine the truth and how do you
22 appraise the credibility of the many witnesses who appeared
23 here and testified in this courtroom during the past two days?
24 Well, as I tell juries regularly, you use your own, plain,
25 everyday common sense. You brought your common sense with you

2 when you reported for jury service; you had it with you the
3 first day you stepped into the jury box; you have had it with
4 you through the trial; you have it with you now and you will
5 take it with you into the jury room. I trust that when you
6 return ultimately from the jury room you will still have it with you.

7 You have seen the witnesses. You have observed the
8 manner of their testifying and whatever credit you may give
9 them must be determined by their conduct and their manner of
10 testifying and their relationship or interest in the outcome.
11 In other words, you again apply your common sense and your every-
12 day experience.

13 You may, of course, take into consideration the
14 interest of a witness. An interested witness is not necessarily
15 unworthy of belief. This is just one factor, however, which
16 you should consider and may consider in determining the weight
17 and credibility to be given to that witness' testimony.

18 If any witness has willfully testified falsely to
19 any material fact, you may disregard all his testimony or
20 accept such part of it as you believe worthy of belief or as
21 it appeals to your reason or judgment.

22 A witness may be discredited or impeached by contra-
23 dictory evidence, or by evidence that at other times the
24 witness has made statements which are inconsistent with the
25 witness' present testimony.

2 If you believe that any witness has been impeached
3 and thus discredited, it is your exclusive province to give
4 the testimony of that witness such weight and credibility, if
5 any, as you may think it deserves.

6 George W. Hendricks testified this morning. A
7 defendant who wishes to testify is a competent witness and
8 his testimony should not be disbelieved merely because he is
9 a defendant. However, in weighing his testimony, you should
10 consider the fact that the defendant has a vital interest in
11 the outcome of this trial.

12 You have heard me sometimes refer to direct evidence
13 and to circumstantial evidence, and it is well to explain now
14 the difference between these two types of evidence.

15 Direct evidence is where a witness testifies to what
16 he saw, heard or observed, what he knows of his own knowledge,
17 something which comes to him by virtue of his own senses.

18 Circumstantial evidence is evidence of facts and
19 circumstances from which one may infer connected facts which
20 reasonably follow in the common experience of mankind. Stated
21 somewhat differently, circumstantial evidence is that evidence
22 which tends to prove a disputed fact by proof of other facts
23 which have a logical tendency to lead the mind to a conclusion
24 that those facts exist which are sought to be proved.

25 Circumstantial evidence, if it is believed, is of

2 no less value than direct evidence, for in each case you must
3 be convinced beyond a reasonable doubt of the guilt of a
4 defendant.

5 Let us take one simple example, one which is often
6 used in this courthouse, to illustrate what is meant by
7 circumstantial evidence.

8 When we all entered the courthouse this afternoon
9 the sun was shining brightly outside and it was a clear day,
10 there was no rain. Now, assume that in this courtroom the
11 blinds are drawn and drapes are on the windows and the drapes
12 are closed so that you cannot look outside. Assume that you
13 are sitting in your jury box and despite the fact that it was
14 bright and sunny when you entered the building, somebody
15 walks through the door with an umbrella dripping water,
16 followed in a short time by another person with a raincoat
17 and the raincoat is wet. Taking our assumptions, you cannot
18 look out the windows to see whether it is raining or not, and
19 if you are asked, is it raining, you cannot say you know it
20 directly of your own observation, but certainly upon the
21 combination of facts as I have given them to you, even though
22 when you entered the building it was not raining outside, it
23 would be reasonable and logical for you to conclude that it
24 was raining now.

25 That is about all there is to circumstantial evidence.

2 You infer on the basis of reason and experience from an
3 established fact the existence of some further fact. There
4 are times when different inferences can be drawn from facts
5 whether they are proved by direct or circumstantial evidence.

6 The Government asks you to draw one set of inferences
7 while the defendant asks you to draw another. It is for you
8 to decide, and for you alone, what inferences you will draw.

9 From time to time I have used the words "reasonable
10 doubt." Now, what is reasonable doubt? A reasonable doubt
11 is such a doubt as would cause prudent men to hesitate to
12 act in matters of importance to themselves. It is doubt which
13 a reasonable person has after carefully weighing all the
14 evidence. Reasonable doubt is one which appeals to your
15 reason, your judgment, your common sense and your experience.
16 Reasonable doubt is not caprice, whim or speculation. It is
17 not an excuse to avoid the performance of an unpleasant duty.
18 It is not sympathy for the defendant. Vague, speculative or
19 imaginary qualms or misgivings are not reasonable doubts.

20 It is not necessary for the Government to prove the
21 guilt of a defendant to a mathematical certainty or beyond
22 all possible doubt. If that were the rule, few men or women,
23 however guilty they might be, would be convicted. The reason
24 is that in this world of ours it is practically impossible for
25 a person to be absolutely certain of any controverted fact

2 which by its nature is not susceptible of mathematical
3 certainty.

4 In consequence, the law is such that in a criminal
5 case it is enough that a defendant's guilt is established
6 beyond a reasonable doubt, not beyond all doubt.

7 If after a fair, impartial and careful consideration
8 of all the evidence you are convinced of the guilt of the
9 defendant, you must convict.

10 If on the other hand after such a fair, impartial and
11 careful consideration of all the evidence, you doubt the
12 defendant's guilt, you must acquit that defendant.

13 Let us look briefly at the evidence presented in
14 this case.

15 There were many witnesses, despite the fact that the
16 case itself was short. You first heard from Walter J. Donahue,
17 branch manager of the Bankers Trust Company at 845 West 149th
18 Street in the Bronx where Mr. Hendricks had his account.

19 I would indicate that that location where the checks
20 were deposited is within the Southern District of New York.

21 The account was opened in 1969 and was closed on
22 May 3, 1973. Mr. Donahue identified a number of bank records.
23 While he was on the stand you will recall a number of exhibits
24 were put into evidence.

25 He testified that he spoke with Mr. Hendricks on

2 some day in October 1972 at the bank after a number of welfare
3 checks had been returned to the bank with some protest
4 attached. These checks had originally been deposited into
5 Mr. Hendricks' account.

6 Mr. Donahue testified that Mr. Hendricks told him
7 that he, Mr. Hendricks, was in the real estate business and
8 that his tenants were trying to make trouble for him.

9 There was other testimony relative to this conver-
10 sation. Needless to say, it is your recollection which governs.

11 Mr. Donahue also testified that the total welfare
12 checks deposited in the account during the period 1972-1973
13 which were returned were, as I recall the testimony, in excess
14 of \$28,500.

15 Mr. Donahue was re-called this morning and testi-
16 fied regarding the procedure followed by the banks. That is,
17 a customer makes a deposit, his account is credited three or
18 four days later. Welfare checks are sent through a clearing
19 house and then to the bank on which the city drew them and if
20 protested are ultimately returned to the depositing bank.
21 Whereas private checks come back within a matter of days, these
22 city welfare checks require a number of months to be returned
23 to the bank. Checks, for example, which were deposited on
24 December 1, 1972 and were credited promptly thereafter to
25 Mr. Hendricks' account were not returned to the bank with

2 protest until June of '73, at least a number of such checks,
3 and you will recall that Mr. Hendricks withdrew his funds and
4 closed the account on May 3, 1973.

5 Mr. Donahue was followed by 15 or 16 or 17 witnesses
6 whose testimony was quite similar. All except the last of
7 them, Ruth Testa, were recipients of welfare checks.

8 They told us that in December of 1972 they were
9 receiving welfare checks and they told us where they lived.
10 They told us that they received these checks on the 1st and
11 16th of every month. A number of the witnesses indicated their
12 mailboxes were broken into from time to time. I recall one
13 witness telling us that she observed her mailbox to be sawed
14 in half. In any event, these witnesses, or almost all of
15 them, did not receive their December 1, 1972 welfare check.

16 When they were shown a number of exhibits which are
17 in evidence and which you have seen and can see again, which
18 were welfare checks dated on or about December 1, 1972, they
19 looked at the back of the exhibits and said they didn't sign
20 them; didn't authorize anyone else to sign them; didn't
21 authorize anyone to cash the checks and each of them swore
22 that he or she did not receive any of the proceeds of these
23 checks.

24 In addition a number of the witnesses were asked
25 if they ever met the defendant and my recollection is that all

2 those witnesses who were asked that question indicated that
3 they did not know Mr. Hendricks.

4 Following these witnesses we heard from Ellsworth
5 Kearney, the postal inspector. He testified that he had had
6 two meetings with Mr. Hendricks, first on March 26, 1973 at
7 Mr. Hendricks' home, where he said Mr. Hendricks, after having
8 been advised of his constitutional rights, said that the
9 checks that he had deposited in his account were from tenants.
10 Mr. Hendricks also said, according to Mr. Kearney, that he
11 was doing a favor for some guys, as I remember his testimony.
12 When pressed, Mr. Hendricks declined to identify these indi-
13 viduals further and in essence said, "I will be in touch
14 with you and you will hear from me."

15 There is some testimony that Mr. Hendricks called
16 the postal authorities. There is some other testimony that
17 he visited the post office, but that is my total recollection
18 on those subjects. Needless to say, it is your recollection
19 which governs.

20 Inspector Kearney went on to testify that he was
21 present on May 16, 1973 and interviewed Mr. Hendricks at the
22 time of his arrest. At that time he said Mr. Hendricks told
23 him and Inspector Cannon and an assistant United States
24 attorney, as I recall, that he, Mr. Hendricks, had deposited
25 these checks as a favor to a Mr. Cohen who was killed around

2 Christmas of 1972; that after Mr. Cohen was killed, Mr.
3 Hendricks was contacted by Mr. Rosen who wanted to continue
4 the arrangement.

5 I believe there was also some statement made on the
6 day of arrest to the effect that Mr. Hendricks owed Mr. Cohen
7 some money, \$900 from a larger loan; that he deposited these
8 checks for Mr. Cohen who had something wrong with his own
9 account; that Mr. Cohen was killed around Christmas and there-
10 after he, that is, Mr. Hendricks, was contacted by Mr. Rosen
11 and the arrangement, in essence, as I understand it, was that
12 the obligation which Mr. Hendricks had, which was originally
13 in the amount, I understand, of \$2,000, later reduced to a
14 lesser amount, was to be reduced by the sum of \$100 for each
15 batch of checks which Mr. Hendricks deposited in his account.

16 The postal inspector's original interview was on
17 March 26, 1973. There is testimony to the effect that on
18 March 27, 1973, the next day, the sum of \$3,000 was withdrawn
19 from Mr. Hendricks' checking account, and on April 12, 1973
20 another \$2,000 was withdrawn.

21 On cross-examination, Inspector Kearney testified
22 that the defendant, Mr. Hendricks, said that the checks were
23 given to him by tenants. Mr. Kearney said he replied, "The
24 payees of the checks, who were supposed to be the recipients,
25 they don't know you." Mr. Kearney said he said further to

2 Mr. Hendricks, "Since we know that's not true, let's hear the
3 real story."

4 Mr. Kearney made no written report of this. I
5 recall his testimony to the effect that the inspector, Inspec-
6 tor Cannon, appears to have asked Mr. Kearney if he wanted to
7 add anything to Mr. Cannon's report and Mr. Kearney said he
8 had nothing to add.

9 There is some testimony from which you could
10 conclude that the statements which were testified to here
11 were not fully and completely set forth in the report. There
12 is some testimony to the effect that Inspector Kearney did not
13 state to the grand jury that the checks, according to Mr.
14 Hendricks, were given to him by tenants. It is also unclear
15 to me as to whether that specific question was asked of the
16 witness. I am going to leave that matter to your determi-
17 nation. You had a chance to observe each and every one of the
18 witnesses and it is for you to believe or disbelieve them.

19 According to Inspector Kearney on cross-examination,
20 Mr. Hendricks told him that he had gotten the checks from some
21 people. According to Inspector Kearney Mr. Hendricks promised
22 to get in touch with these people. He declined at that point
23 to identify them further and said he would be in touch with
24 the postal inspectors. My recollection is that the names were
25 first revealed at the time of arrest, which as I recall it was

2 May 16, 1973.

3 Inspector Kearney said that he told Mr. Hendricks
4 that he was aware that Mr. Hendricks had \$8,000 in his checking
5 account and, furthermore, that approximately \$20,000 in checks
6 had gone through the account. He said he asked Mr. Hendricks
7 where had it gone, that is, the money, and he said he got no
8 response.

9 Again on cross-examination Inspector Kearney said
10 that at the time of the arrest on May 16, 1973, Mr. Hendricks
11 told him that he had originally owed money to Mr. Cohen; that Mr.
12 Cohen had a real estate business at 153rd Street near
13 Courtland Avenue; had been killed in December of '72. There
14 was also some testimony that Mr. Kearney was advised by Mr.
15 Hendricks that he had used \$1,000 to pay property taxes.

16 Again on cross-examination Inspector Kearney testi-
17 fied that upon withdrawal and the giving of money to Mr. Cohen
18 Mr. Hendricks said that he would deduct about \$100 from the
19 outstanding amount of the loan.

20 There was some further testimony, I think it was on
21 redirect examination of Inspector Kearney, that Mr. Cohen and
22 his partner were under investigation for fencing stolen
23 welfare checks.

24 This morning you heard from Mrs. Hendricks who told
25 something of her family. She indicated that in 1968 her

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2 husband, and I believe she -- the deed is in evidence -- had
3 purchased a property at 1227 Webster Avenue in the Bronx where
4 they had some tenants, and which they managed. They apparently
5 owned that property beginning in 1968. She testified relative
6 to other premises which were owned; a fire which occurred in
7 one or another of these other premises; the fact that there was
8 a strain on their income in 1970; it continued on in 1972 and
9 they lost some tenants at 1227 Webster Avenue. Mrs. Hendricks
10 testified she never saw a great deal of money coming in. From
11 her observation their economic circumstances were about the
12 same through April of 1973.

13 Relative to the March 26, 1973 visit by the postal
14 inspectors, she indicated when they came in she had gone
15 upstairs and she returned downstairs in time to hear the
16 officers ask Mr. Hendricks to go downtown. She heard him
17 say something about he didn't know what they were talking
18 about and that he would come downtown later, which she said
19 he did.

20 She was followed on the stand by Mr. Hendricks who
21 testified that he and his wife had bought the premises at
22 1227 Webster Avenue in 1968; that he owned the premises at
23 that time.

24 I might note that the witness Harden, whose check
25 is Government Exhibit 39, resides at 1428 Webster Avenue. The

2 witness Lloyd, whose check is Government Exhibit 16, resides
3 at 1408 Webster Avenue. The witness Arroya, whose check is
4 Government Exhibit 1, resides at 1658 Webster Avenue. The
5 witness Guerrero, whose check is Government Exhibit 14, resides
6 at 1368 Webster Avenue. The witness Booze whose check is
7 Government Exhibit 36, resides at 1408 Webster Avenue. And
8 the witness Briggs, whose check is Government Exhibit 65,
9 resides at 1350 Webster Avenue.

10 Mr. Hendricks indicated that he never looked at
11 the addresses on the checks and was unaware that the people,
12 or some of the people, lived in city projects.

13 Mr. Hendricks testified that he had met Mr. Cohen
14 some seven or eight years ago; that he did contracting work
15 for Cohen; that there came a time in February or March 1972
16 when he was under a financial strain, and that, of course, was
17 also testified to by his wife. He says he borrowed \$2,000
18 from Cohen to pay taxes and make repairs on his Webster
19 Avenue property. The terms, he said, were that he was to pay
20 the money back over 12 months with a premium of \$200; that is,
21 he was borrowing \$2,000 and was going to repay \$2200.

22 He testified that he began repaying the loan in
23 March 1972; that he was quite strapped and in June of '72 he
24 asked to be permitted to pay a lesser amount.

25 At about the same time Mr. Cohen told him that he

2 was having trouble with his accountant and asked Mr. Hendricks
3 to deposit some welfare checks.

4 You have heard the testimony relative to the deposits
5 of welfare checks. Mr. Hendricks testified that with each
6 group of welfare checks he deposited, he was given a reduction
7 in his outstanding loan of some \$100. As I recall his testi-
8 mony, he said when the matter reached its termination in the
9 spring of 1973, he still owed Mr. Cohen's successor and
10 partner, Mr. Rosen, some three or four hundred dollars.

11 He testified that if the deposits were large enough,
12 Mr. Cohen would give him an adjustment on his obligation. He
13 says that it started out in July, August and September, 1972
14 with his receiving approximately seven or eight hundred
15 dollars in welfare checks from Mr. Cohen; that later on the
16 amount grew as far as the welfare checks were concerned; that
17 except for these reductions in the loan, he said that he was
18 not given any portion of the monies, he held them and then
19 would remit them and ultimately he said he remitted monies to
20 first Mr. Cohen and later Mr. Rosen.

21 He testified that in the fall of 1972, he thought
22 between October 10 and November 2, he had gone to the Bankers
23 Trust Company. He said he spoke with Mr. Donahue who asked
24 about some welfare checks which had bounced. He said he told
25 Mr. Donahue "We are having trouble with our tenants." He said

2 at about Christmas of 1972 Mr. Cohen was shot and killed by
3 a person or persons unknown. He said that shortly after Mr.
4 Cohen's death Mr. Rosen came to him, said his obligation to
5 Mr. Cohen continued and that he still owed some eight or nine
6 hundred dollars. He said that when he dealt with Mr. Rosen,
7 Mr. Rosen also gave him welfare checks which he thought had
8 been received by Mr. Rosen as rent payments. He said the
9 amount of the checks received from Mr. Rosen were in larger
10 sums than from Mr. Cohen.

11 He said his dealings with Mr. Rosen were by Mr.
12 Rosen calling him or coming by. He said he didn't know Mr.
13 Rosen's address or telephone number; that their relationship
14 continued from after Mr. Cohen was shot at Christmastime, 1972,
15 until April of 1973.

16 He said he always returned the money to Mr. Cohen,
17 and later to Mr. Rosen, in cash; that the money that he returned
18 was in round amounts. He testified that he did not know the
19 checks were stolen until he was arrested on May 16, 1973.

20 He said in March of 1973 the postal inspector showed
21 him one check. He said he wanted to contact Mr. Rosen and
22 have him come down to the post office to explain. He said
23 that he could not get in touch with Mr. Rosen, having neither
24 his address nor telephone number.

25 In May of 1973 he says he told the postal inspectors

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2 that he had borrowed money initially from Mr. Cohen.

3 On cross-examination he said that he borrowed
4 \$2,000 from Mr. Cohen; that Mr. Cohen's office was located on
5 153rd or 154th Street off Melrose Avenue. He said that over-
6 all he had deposited, he thought, some 30 or 40 thousand
7 dollars of welfare checks, actually several hundred checks.
8 He says he thought that they were rent checks from buildings
9 Mr. Cohen and Mr. Rosen operated.

10 On cross-examination he repeated that for cashing
11 the checks, Mr. Cohen reduced the payments due in reduction of
12 his loan.

13 He said on cross-examination that the reason Mr.
14 Cohen asked him to cash his welfare checks was because his
15 bank accounts were tied up. He said he cashed these checks
16 for Mr. Cohen and Mr. Rosen over a period of approximately,
17 as I recall the testimony, nine months.

18 On cross-examination he testified that some \$10,000
19 was drawn from his checking account and was turned over to
20 Mr. Rosen after the interview by the postal inspectors in
21 March of 1973.

22 Relative to his conversation with Mr. Donahue at
23 the Bankers Trust Company, he said that he had told Mr.
24 Donahue "We were having trouble with our tenants." He said
25 he did not mean by this his tenants; that when he said "we" he

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2 included as "we" Mr. Cohen, who at that time was still alive.

3 Finally he testified that the last date on which he
4 deposited checks from Mr. Rosen was March 19, 1973.

5 That concludes the testimony in the case. There
6 were numerous exhibits placed in evidence, including the
7 checks to which I have made reference, and bank records and
8 other items. All of these exhibits, which are in evidence,
9 are available to you.

10 The defendant has been charged with separate crimes
11 in the three counts of the information which are being given
12 to you, Counts 1, 2 and 3. When you deliberate, you should
13 give separate consideration and render separate verdicts with
14 respect to each count.

15 You will vote first as to Count 1, then as to Count
16 2 and finally as to Count 3.

17 A defendant is entitled to have his guilt or
18 innocence as to each of the crimes charged determined from
19 his own conduct and from the evidence which applies to him.
20 If you find that the defendant is guilty beyond a reasonable
21 doubt of any of the crimes charged in the indictment, a
22 verdict of guilty as to that count should be returned as to
23 him.

24 I will conclude with these few final remarks. Under
25 your oath as jurors you may not allow the consideration of

2 punishment which might be inflicted upon a convicted defendant
3 to influence your verdict in any way or in any sense enter into
4 your deliberations. Your function is to solely determine the
5 guilt or innocence of the defendant upon the basis of the
6 testimony. If you believe that the testimony shows beyond a
7 reasonable doubt that the defendant is guilty of any of the
8 charges made in the indictment, you will find him guilty of
9 the charges which you believe to have been proved beyond a
10 reasonable doubt.

11 If you believe that the charges, or some of the
12 charges, have not been proved beyond a reasonable doubt, or
13 that the evidence respecting the defendant is as consistent
14 with innocence as with guilt, he should be acquitted. But
15 on the other hand, if you find that the law has been violated,
16 you should not refuse because of sympathy or for any other
17 reason to render a verdict of guilty.

18 There are twelve people on this jury. Any verdict
19 must be the unanimous verdict of all of you. I will point
20 out, however, that no one should enter upon the deliberations
21 in the jury room with such pride of opinion that he would
22 refuse to change it if convinced by intelligent argument on
23 the part of another juror or jurors that they are right. How-
24 ever, you are not to do violence to your own well-founded
25 opinion and common sense.

2 As I said a few moments ago, you will be taking your
3 good common sense into the jury room. I expect that when you
4 come out of the jury room your good common sense will accompany
5 you. You are entitled, each of you, to your opinion. In
6 other words, each of you must decide the case for himself or
7 herself after thoroughly reviewing the evidence and exchanging
8 views with your fellow jurors.

9 After you have exchanged your views, you should vote
10 and the tally will be kept by your foreman.

11 Ladies and gentlemen, I have now completed my charge.
12 I will see counsel at the side bar.

13 (At the side bar.)

14 THE COURT: Are there any exceptions?

15 MS. HERMANN: Yes, Your Honor. I would like to
16 first renew all my earlier exceptions made to the charge.

17 THE COURT: You may do so.

18 MS. HERMANN: And to take an exception on Your
19 Honor's charge -- false exculpatory charge which I believe
20 in its inception implied a belief on Your Honor's part that
21 the defendant -- you said something that he had falsely
22 proclaimed his innocence which I think suggests an opinion
23 on Your Honor's part that he was guilty.

24 THE COURT: Of course I could comment on the
25 evidence. I do not think I did. I don't recall such testimony.

2 In any event, put your exception in the record.

3 MS. HERMANN: I would also like to except to Your
4 Honor's charge on aiding and abetting which I think, in the
5 context in which Your Honor gave it, removed the element of
6 knowledge from the defense.

7 THE COURT: You have your exception.

8 MS. HERMANN: In terms of the marshaling of the
9 evidence, you testified --

10 THE COURT: I testified?

11 MS. HERMANN: Excuse me. You summarized Mr.
12 Donahue's testimony saying that Mr. Hendricks withdrew his
13 funds and closed the account in May of 1973 when it is my
14 recollection that Donahue testified that the account was
15 frozen at that time.

16 Shall I make all my exceptions?

17 THE COURT: Yes, go ahead.

18 MS. HERMANN: In regard to my cross-examination of
19 Inspector Kearney about whether there was anything in the
20 Cannon report about this, Your Honor did say Inspector Cannon
21 did make a report which I believe suggested that the report
22 contained missing elements which I was challenging.

23 THE COURT: I didn't draw any inference from what I
24 said, but you continue.

25 MS. HERMANN: I would like to object to Your Honor's

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2 marshaling the Webster Avenue addresses, that note and comment
3 on that.

4 I would like to object to Your Honor's saying that
5 Mr. Hendricks said that Mr. Cohen asked him to deposit welfare
6 checks when it was I believe clear that Mr. Hendricks always
7 said that Mr. Cohen always referred to them as rent checks.

8 THE COURT: Right on them they say "Department of
9 Social Service" checks. It seems to me the documents are in
10 evidence, they speak for themselves. I'm not even sure that
11 the conversation with Cohen is admissible for "the truth of
12 the matter asserted," but go ahead.

13 MS. HERMANN: Finally, I am very concerned that Your
14 Honor did not include in your marshaling of the evidence any
15 reference to Mr. Hendricks' testimony about his income and
16 expenses which was an important element of our defense.

17 THE COURT: I said he was in strained financial
18 circumstances. I commented upon that when I mentioned his
19 wife's testimony and again reiterated the matter when I
20 reviewed his testimony.

21 MS. HERMANN: I mean there is testimony about the
22 fact that he spent less than his income was in the period of
23 June of 1972 until May of 1973, that is the element to which
24 I refer.

25 THE COURT: Is there anything else?

2 MS. HERMANN: No, Your Honor.

3 THE COURT: You have your exceptions.

4 Does the Government have any exceptions?

5 MR. GLECKEL: Your Honor, the Government has no
6 exceptions, but would request --

7 THE COURT: We will get to the requests in a moment.

8 Does the defendant request any additional charges or
9 any supplements beyond the exceptions which you have taken?

10 MS. HERMANN: No, Your Honor, unless you would want
11 to clarify the record on any of those exceptions.

12 THE COURT: What I, of course, told them at or near
13 the outset was that it was their recollection which governed
14 and, as a matter of fact, as I think I said, and I will quote
15 from my charge: "So, too, anything I may have said during the
16 trial, or may refer to during the course of these instructions
17 as to any matter in evidence or as to any factual matter, is
18 not to be taken in lieu of your own recollection."

19 Since I said that already, I would decline to make
20 a further statement.

21 Is there anything else in the way of additional
22 requests?

23 MS. HERMANN: Perhaps you could indicate to the jury
24 when you would be dismissing them tonight so that they don't
25 have the fear that they will be held.

2 THE COURT: I want to talk to you both about that.
3 Let's finish this first.

4 Do you have any additional requests?

5 MS. HERMANN: No, Your Honor.

6 MR. GLECKEL: Your Honor, the Government requests
7 a clarification that to find the defendant guilty on any count,
8 they only have to find that he knowingly possessed one of the
9 checks charged in that count.

10 THE COURT: I decline to supplement my charge in
11 that regard.

12 Are there any other requests?

13 MR. GLECKEL: No, Your Honor.

14 THE COURT: I note that it is now 4:30. I suggest
15 that we recess court at this time; that I send the jury home
16 with appropriate instructions and direct all thirteen jurors
17 to return tomorrow morning -- I would suggest ten o'clock --
18 and that when they are all assembled we will at that point
19 dismiss the alternate, but since the deliberations would not
20 be beginning now, if one of the other jurors did not appear
21 tomorrow morning we would be able to put the alternate right in.

22 Is that satisfactory to the defendant?

23 MS. HERMANN: Yes, Your Honor.

24 THE COURT: Is that satisfactory to the Government?

25 MR. GLECKEL: The Government realizes that this is

2 in the discretion of Your Honor, but would prefer that
3 deliberations begin this afternoon.

4 THE COURT: The Court will send the jury home.

5 (In the presence of the jury.)

6 THE COURT: Ladies and gentlemen, the case has been
7 concluded. I have conferred with counsel noting the hour, and
8 I would make a suggestion. I would suggest that I send you
9 home now and direct you to return tomorrow morning to begin
10 your deliberations. If the entire jury opposes that, I will
11 permit you to begin deliberating now, but I think it much
12 better that you sleep on this, not discuss it among yourselves
13 or with anyone else, and return tomorrow morning to begin your
14 deliberations.

15 Is the jury agreeable to that course of action?

16 I find a unanimous jury.

17 Now, the time. I think it is discretionary and I
18 would be amenable to a ten o'clock start, if it would be a
19 little more convenient for you.

20 I see a nodding of heads. I consider that done.

21 Let me make this observation. The case has been
22 concluded. Think about it. Don't discuss it among yourselves
23 or with anybody at home. If you should read about the case,
24 hear about the case on the radio, see anything about the case
25 on television, you are directed to advise me of that in the

2 morning.

3 You will begin tomorrow morning by assembling here,
4 and I am going to ask our alternate juror to return tomorrow
5 morning as well. Once I know that all of you are here, then
6 I will discharge, with thanks, our alternate juror, but if
7 anything should happen to one of you I know I will have one
8 extra juror just in case.

9 I think I've got enough acquaintance now with this
10 jury to be pretty certain I am going to find thirteen people
11 here tomorrow.

12 So I would ask that you assemble in your jury room
13 tomorrow. Do not begin discussing the case until all thirteen
14 of you are here, and when thirteen of you have assembled, I
15 would ask that the marshal, or Miss Kruger, be notified, and
16 then we will bring out our alternate juror and if everyone
17 else is here, she will be excused tomorrow morning.

18 I think we should swear in the marshals tonight
19 before I discharge the jury for the evening.

20 Is this procedure satisfactory to both sides?

21 MS. HERMANN: It is satisfactory to the defendant.

22 MR. GLECKEL: It is satisfactory to the Government,
23 Your Honor.

24 THE COURT: Very well. Thank you.

25 (Marshal sworn.)

2 THE COURT: Very well.

3 The jurors are excused. They are directed to report
4 to their jury room at ten o'clock tomorrow morning, but to
5 begin your deliberations after all of you have assembled and
6 after I have then removed from the jury room our first alternate
7 and in the event you all do not appear, we will utilize the
8 services of our faithful alternate.

9 I excuse the jury, say good night, and I'll see you
10 tomorrow morning at ten o'clock.

11 Counsel are excused.

12 (Adjourned to Friday, April 19, 1974 at 10:00 a.m.)

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1
2 UNITED STATES OF AMERICA
3 v
4 GEORGE W. HENDRICKS

74 Cr 422

5 New York, April 19, 1974
6 10:00 a.m.

7 (In open court; jury present.)

8 THE COURT: Good morning, ladies and gentlemen.

9 I see our entire panel of thirteen jurors is here
10 right on time. I am going to send the twelve regular members
11 of the jury into the jury room now. You will be attended to
12 by the marshal.

13 Has the marshal been sworn, Miss Kruger?

14 THE CLERK: Yes.

15 THE COURT: Very well. You will be attended to by
16 the marshal. If you have any messages or requests, your
17 foreman will write them out on a piece of paper which the
18 marshal will give to you. I will be available to you, as will
19 counsel, on very short notice.

20 The twelve members of the jury may now proceed to
21 the jury room to begin their deliberations.

22 (At 10:05 a.m., the jury retired to deliberate.)

23 THE COURT: At this time I would like to excuse our
24 alternate juror, Mrs. Savaris, with the thanks of the Court.

25 Mrs. Savaris, you have attended here at the trial

2 every day. I noticed how you listened carefully to the testi-
3 mony and I know if you had been in that jury room with the
4 others you would have done your share and done your part as you
5 have out here. But before I excused you-I wanted to thank you
6 for the time which you have taken from your daily work and your
7 daily life to come down here and serve as a trial juror in this
8 United States District Court.

9 So you are excused with the thanks of the Court.
10 Good luck to you.

11 (Alternate juror excused.)

12 THE COURT: Miss Hermann, I understand you must leave
13 the courtroom temporarily to fulfull two other commitments in
14 the courthouse.

15 May I ask if you would stipulate that if the jury sends
16 out a note in which they specifically request certain exhibits,
17 that you would permit the Court to inspect the exhibits, and if
18 the exhibits requested are in evidence, to send them in to the
19 jury forthwith without the necessity of calling you? Of course,
20 if the note from the jury indicates something which is either
21 unclear or I believe requires my consulting with counsel, we
22 will hold off until you are available.

23 Would that procedure be satisfactory to the
24 defendant?

25 MS. HERMANN: Yes, Your Honor.

2 THE COURT: Is that satisfactory to the Government,
3 Mr. Gleckel?

4 MR. GLECKEL: Yes, it is, Your Honor.

5 THE COURT: Very well, you are excused.

6 (Recess.)

7 (At 10:30 a.m. a note was received from the jury.)

8 (Note from Jury marked as Court Exhibit 1.)

9 (10:50 a.m., in open court; jury present.)

10 THE COURT: I have received a note from the jury
11 which I have marked Court's Exhibit 1 for identification. The
12 note reads as follows:

13 "1) Mr. Donahue's first testimony.

14 "2) Dates of three separate counts."

15 I have asked the court reporter to prepare his notes
16 so that he may read to you from Mr. Donahue's testimony on the
17 first day of the trial.

18 I assume the reason the first testimony is specified
19 is that there is no request for the testimony when he was re-
20 called yesterday. Therefore, I will ask the court reporter to
21 turn to his notes and to read Mr. Donahue's testimony on the
22 opening day of the giving of evidence.

23 (Record read.)

24 THE COURT: The second question on the note sent out
25 by the jury, which is Court's Exhibit 1 for identification, says:

2 "Dates of three separate counts."

3 Referring to the information, Count 1 says, "On or
4 about the first day of December, 1972."

5 Count 2: "On or about the first day of December,
6 1972."

7 Count 3: "On or about the 5th day of December, 1972."

8 We have tried to answer the two questions submitted
9 by the jury. I would say one other thing. If when you return
10 to the jury room with respect to the second question that you
11 asked, if the jury wishes a copy of the information, if you
12 will send out a note making your request, I will send a copy
13 of the information into the jury room and you may have it. If
14 you do not require the information itself, there will be no
15 need to send out a note.

16 I believe we have covered the subject of your note
17 and, therefore, I will direct the jury to return to their
18 jury room to continue their deliberations.

19 We shall all be available to you in the event any-
20 thing further is required.

21 (At 11:20 a.m., the jury again retired to continue
22 deliberations.)

23 THE COURT: The court will stand in recess pending
24 further communications from the jury.

25 MR. GLECKEL: Your Honor, I have some 3500 material

2 to read into the record. This might be an appropriate time for
3 me to do it.

4 MS. HERMANN: May I be excused from the reading of the
5 3500 material?

6 THE COURT: He wants to read 3500 material into the
7 record. Then you can be excused, but let him do that first.

8 MR. GLECKEL: 3500 is a statement given by Mr.
9 Donahue to Inspector Gonzales. 3501 is an affidavit by Miss
10 Anderson. 3502 is a statement by Miss Santiago. 3503 is a
11 statement by Miss Harden. 3504 is a statement by Miss Lloyd.
12 3505 is a statement by Mr. Alvarado. 3506 is a statement by
13 Mrs. Campbell. 3507 is a statement by Miss Arroya. 3508 is
14 a statement by Miss Barnes. 3509 is a statement by Miss Arzola.

15 3510 is a statement by Miss Guerrero. 3511 is a
16 statement by Miss Brown. 3512 is a statement by Miss Rodriguez.
17 3513 is a statement by Miss Booze. 3514 is a statement by
18 Miss Rovena. 3515 is a statement by Miss Waynes. 3516 is a
19 waiver of rights form dated March 26, 1973. 3517 is a waiver
20 of rights form dated May 6, 1973. 3518 is the grand jury testi-
21 money of Inspector Kearney. 3519 is agency report signed by
22 Inspector Cannon. 3520 are statements of the defendant given
23 to Mr. Figueiroa. 3521 is a statement of the defendant given
24 to Inspector Kearney.

25 That's it, thank you.

2 THE COURT: The court will be recessed to await
3 further communications from the jury.

4 (Recess.)

5 (At 12:30 p.m., a note was received from the jury.)

6 (Jury absent.)

7 THE COURT: We have received a second note from the
8 jury, which I will ask be marked as Court's Exhibit 2. The
9 note reads as follows:

10 "We would like to see all Mr. Hendricks' bank state-
11 ments for the months of March, April and May, if available,
12 plus the last batch of checks deposited after March 26, 1973,
13 plus withdrawals after March 26, 1973."

14 Let's see what among the jury's requests is actually
15 in evidence.

16 What are 66 and 67, which I list as account state-
17 ments?

18 MR. GLECKEL: Your Honor, they cover the periods of
19 March and April I think through May 2. That is the last
20 account statement in existence.

21 THE COURT: They are in evidence; right?

22 MR. GLECKEL: Yes, Your Honor.

23 THE COURT: It would seem to me that the jury's
24 request would cover that in the first instance.

25 MS. HERMANN: Yes, Your Honor.

2 THE COURT: Do you have Exhibit 66 and 67, Miss
3 Kruger?

4 THE CLERK: Yes, Your Honor.

5 THE COURT: Very well.

6 MS. HERMANN: Your Honor, if they are going to be
7 given those statements, there are Xerox circles on these state-
8 ments and I would like them to be instructed that those do not
9 relate in any way to the records. I am really concerned that
10 we weren't able to come up with an unmarred version of those
11 two bank statements because Mr. Hendricks' copies have --

12 THE COURT: They are not available?

13 MS. HERMANN: No, they are, but they have little
14 handwritten notes by Mr. Hendricks, but I am very concerned
15 by those circles. I wonder what we can do.

16 THE COURT: I will bring them in, then, and I will
17 tell them to disregard the circles which are on here; that
18 these circles have no significance. That's all I can do.

19 MS. HERMANN: I am wondering, Your Honor, and I
20 think perhaps that this might lessen the potential prejudice
21 of those circles, if we might circle some other things on
22 those papers, because what I recollect as being circled are --

23 THE COURT: The deposits.

24 MS. HERMANN: The deposits.

25 THE COURT: I am going to bring the jury in in a

2 moment. All I can tell them is that they should disregard
3 the circles; that these circles have no special significance.

4 The other item which they request is the last batch
5 of checks deposited after March 26, 1973 plus the withdrawals
6 after March 26, 1973. I do not believe there are any checks
7 in evidence covering that latter period. Am I correct?

8 MR. GLECKEL: That is correct, Your Honor, yes,
9 it is.

10 THE COURT: The only records of withdrawals, either
11 deposits or withdrawals, would be what are contained on the
12 bank statements.

13 MR. GLECKEL: That is correct as well, Your Honor.

14 THE COURT: All right.

15 Bring in the jury, Miss Kruger.

16 (Note from jury marked as Court's Exhibit 2.)

17 (In open court; jury present.)

18 THE COURT: I have received a second note from the
19 jury which I have marked Court's Exhibit 2.

20 The note reads as follows:

21 "We would like to see all Mr. Hendricks' bank state-
22 ments for the months of March, April and May, if available,
23 plus the last batch of checks deposited after March 26, 1973,
24 plus withdrawals after March 26, 1973."

25 I have here, and I am going to give to the jury

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2 Government's Exhibits 66 and 67 in evidence. They are state-
3 ments of account on the Bankers Trust Company, or at least one
4 of the Bankers Trust Company accounts of Mr. Hendricks.
5 Exhibit 66 covers the period March 3 to April 3, 1973. Exhibit
6 67 covers the period from April 4 to May 2, 1973.

7 Each of these exhibits has circled in some sort of
8 an indelible ink, circles around certain of the figures. I
9 ask the jury when studying these statements of account to dis-
10 regard these circles and to afford them no significance in
11 connection with your deliberations.

12 Relative to the matter of checks deposited after
13 March 26, plus withdrawals after March 26, there are no checks
14 as such in evidence, nor are there any withdrawal slips which
15 are in evidence, so I can give you no checks or withdrawals.
16 However, as is common on bank statements, the two exhibits
17 which you have, or which you will have, the statements of
18 accounts, do indicate deposits and under "Checks and Other
19 Charges" you would have withdrawals, and they indicate a bank
20 balance. Of course the exhibits speak for themselves. I am
21 certain that each of you has had experience with bank state-
22 ments and I would suggest that you can read them for your-
23 selves and assess their significance.

24 So in response to the jury's request, I am handing
25 up to the jury Government Exhibits 66 and 67 in evidence, and

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2 as I say, I direct that you disregard and attach no signifi-
3 cance to the black crayon circles which appear on those
4 exhibits.

5 I understand that the jury, in view of the inclement
6 weather, has chosen to eat in. I understand that orders are
7 in the process of being given and that food will be brought in.

8 I will ask counsel to remain for ten minutes after
9 the jury goes back. If you have any questions, I would
10 appreciate hearing from the jury in note form within the next
11 ten minutes. If I don't hear from you, I shall then release
12 counsel so that they may go to lunch and I will direct counsel
13 to return at 2:00 p.m.

14 Is that satisfactory?

15 MR. GLECKEL: Yes, it is, Your Honor.

16 MS. HERMANN: Yes.

17 THE COURT: We will await any questions you might
18 have for 10 minutes and then if there are no questions, I am
19 going to excuse counsel and Mr. Hendricks. They can all go
20 to lunch and I will direct them to return at 2:00 p.m.

21 The jury is excused and may return to the jury room
22 to continue their deliberations.

23 (At 12:46 p.m., the jury again retired to continue
24 deliberations.)

25 (Recess.)

2 (At 12:49 p.m. a note was received from the jury.)

3 THE COURT: I have received a third note from the
4 jury, which I will ask, Miss Kruger, that you mark as Court's
5 Exhibit 3.

6 The note reads:

7 "The three copies of the charges (information)
8 against Mr. Hendricks."

9 I take this, in light of what has transpired
10 previously, to be a request by the jury that I send in to
11 them a copy of the information which contains the three
12 counts, which I at times have referred to as charges.

13 I would prefer to mark the information, which I
14 will send in to the jury, as Court's Exhibit 4 for identifi-
15 cation so that it will be clear in the record what is sent in.

16 Is that satisfactory?

17 MR. GLECKEL: Yes, it is, Your Honor.

18 MS. HERMANN: It is satisfactory to the defendant,
19 Your Honor.

20 (Note marked Court's Exhibit 3.)

21 (Information marked Court's Exhibit 4.)

22 MS. HERMANN: Your Honor, may I show Mr. Hendricks
23 the revised information?

24 THE COURT: Yes, indeed you may.

25 MS. HERMANN: Thank you, Your Honor.

2 THE COURT: Miss Kruger, would you give the infor-
3 mation, which has now been marked Court's Exhibit 4 for identi-
4 fication, to the marshal and request the marshal to take it in
5 to the jury.

6 (Recess.)

7 THE COURT: It is going on 1:00 p.m. The court
8 will be recessed until 2:00 p.m. Counsel are excused and
9 the defendant is excused. Please return at 2:00 p.m.

10 (Luncheon recess.)

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2 AFTERNOON SESSION 2:00 p.m.

3 (At 2:35 p.m. a note was received from the jury.)

4 THE COURT: Good afternoon.

5 MR. GLECKEL: Good afternoon, Your Honor.

6 MS. HERMANN: Good afternoon, Your Honor.

7 THE COURT: I have a note from the jury, which I
8 would ask be marked as Court's Exhibit 5.

9 The note reads as follows:

10 "Part of his Honor's charge, point of law in
11 reference to 'aiding,' 'abetting.' Thank you."

12 Mark the note Court's Exhibit 5.

13 (Note marked as Court's Exhibit 5.)

14 THE COURT: In my charge on aiding and abetting,
15 to which you took an exception, Miss Hermann, I charged as
16 follows:

17 "18, United States Code, Section 2, provides that a
18 person who aids and abets another to commit an offense is just
19 as guilty of that offense as if he committed it himself.
20 Accordingly, you may find George W. Hendricks guilty of the
21 offense charged in Counts 1, 2 and 3 if you find that beyond
22 a reasonable doubt that Messrs. Cohen and Rosen committed the
23 offense and that George W. Hendricks aided and abetted them.

24 "To determine whether a defendant aided and abetted
25 in the commission of an offense, you ask yourself these

2 questions:

3 "Did he associate himself with the venture?

4 "Did he participate in it as something he wished
5 to bring about?

6 "If he did, then he is an aider and abettor."

7 If you prefer, Miss Hermann, I would be willing to
8 charge in a somewhat shorter form as follows:9 "Whoever aids, abets, counsels, commands, induces
10 or procures the commission of a crime is punishable as a
11 principal. In order to aid or abet the commission of a crime,
12 a person must associate himself with the criminal venture,
13 participate in it and try to make it succeed."

14 MS. HERMANN: I would prefer that, Your Honor.

15 THE COURT: You would prefer the latter?

16 MS. HERMANN: Yes, Your Honor.

17 THE COURT: I will indicate to the jury that I will
18 give them a brief charge on aiding and abetting and will charge
19 as I have indicated.

20 MS. HERMANN: Thank you, Your Honor.

21 THE COURT: Bring in the jury.

22 (Jury present.)

23 THE COURT: I have received a note from the jury,
24 marked Court's Exhibit 5.

25 Court's Exhibit 5 reads:

2 "Part of his Honor's charge, point of law in
3 reference to 'aiding,' 'abetting.' Thank you."

4 I will charge on the matter of aiding and abetting
5 in a briefer form than I charged in the main charge, but I
6 think it will cover the point of your query. If after I have
7 charged on this subject you want a further explanation, I
8 would appreciate your retiring to the jury room and sending
9 me another note. I have gone over the proposed supplement to
10 my charge with counsel and I find it agreeable to them and I
11 think it will answer your note.

12 Whoever aids, abets, counsels, commands, induces or
13 procures the commission of a crime is punishable as a
14 principal. In order to aid or abet the commission of a crime,
15 a person must associate himself with the criminal venture,
16 participate in it and try to make it succeed.

17 That completes my charge on aiding and abetting. I
18 will request the jury to return to the jury room to continue
19 their deliberations.

20 If you find that you wish more on that subject, or
21 any other, I will be available to you just as soon as I receive
22 a further note from you.

23 (At 2:52 p.m., the jury again retired to continue
24 deliberations.)

25 THE COURT: I will recess court until we hear further

2 from the jury. I would suggest that counsel remain nearby. I
3 think that we may have either another note from the jury or
4 possibly something further very shortly.

5 MS. HERMANN: Thank you, Your Honor.

6 MR. GLECKEL: Thank you.

7 (Recess.)

8 (3:13 p.m., in open court; jury present.)

9 THE COURT: I have received a note from the jury
10 which will be marked Court's Exhibit 6.

11 The note reads as follows:

12 "Your Honor, we have arrived upon a verdict."

13 Miss Kruger, will you mark the note accordingly and
14 would you ascertain whether all members of the jury are present
15 and then proceed to take the verdict.

16 (Note marked Court's Exhibit 6.)

17 (Jury roll called; all present.)

18 THE CLERK: Mr. Foreman, has the jury agreed upon a
19 verdict?

20 THE FOREMAN: Yes, ma'am.

21 THE CLERK: What is your verdict as to Count 1?

22 THE FOREMAN: Guilty.

23 THE CLERK: What is your verdict with respect to
24 Count ??

25 THE FOREMAN: Guilty.

2 THE CLERK: What is your verdict with respect to
3 Count 3?

4 THE FOREMAN: Guilty.

5 THE CLERK: Ladies and gentlemen of the jury, listen
6 to your verdict as it stands recorded.

7 You say you find the defendant, George W. Hendricks,
8 guilty as charged in Counts 1, 2 and 3 and so say you all.

9 THE COURT: Miss Hermann, do you request the jury be
10 polled?

11 MS. HERMANN: I do, Your Honor.

12 THE COURT: Ladies and gentlemen, we will now poll
13 the jury. Miss Kruger will ask each of you whether that is
14 your verdict.

15 Ladies and gentlemen of the jury, listen to your
16 verdict as it stands recorded.

17 You say you find the defendant guilty on Counts 1,
18 2 and 3.

19 (Each juror, upon being asked by the clerk, "Is that
20 your verdict," answered in the affirmative.)

21 THE COURT: The trial has been concluded. The jury
22 has fulfilled its obligation. I never tell a jury at this
23 point whether I agree or disagree with their verdict. I have
24 tried to preside impartially. I have tried to see to it that
25 all admissible evidence was presented to you; that all proper

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